

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: WESTERN MINNESOTA MUNICIPAL POWER AGENCY	DOCKET NO. WRU-03-19
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**ORDER GRANTING REQUEST TO BEGIN ADVANCE SITE PREPARATION AND
ASSIGNING DOCKET TO ADMINISTRATIVE LAW JUDGE**

(Issued June 30, 2003)

On June 9, 2003, the Western Minnesota Municipal Power Agency (Western Minnesota) filed with the Utilities Board (Board) an application for waiver of the generating certificate requirements of Iowa Code chapter 476A. Western Minnesota intends to construct a 90 MW electric generating facility for peaking purposes in Audubon County, Iowa, near the communities of Exira and Brayton. Western Minnesota supplies power, energy, and transmission capability to the Missouri River Basin Municipal Power Agency (Missouri River) pursuant to a power supply contract. Missouri River is composed of 57 municipally-owned utilities in the states of Iowa, Minnesota, North Dakota, and South Dakota.

Neil and Lavonne Schroeter and John and Lucille Nelson filed objections to the request for waiver. The Schroeters and Nelsons reside in Brayton, Iowa. An objection was also filed by Trevor Schroeter, the son of the Schroeters and grandson of the Nelsons. The proposed facility borders land owned by these families. On

May 7, 2003, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to the waiver request. Consumer Advocate said it did not object to the waiver, conditioned upon Western Minnesota's commitment to successfully negotiate with affected transmission owners resolution of minor impacts on the transmission system. Consumer Advocate noted that in discovery it was provided information that the proposed facility will serve approximately 44,300 customers of various municipal utilities in Iowa.

On June 9, 2003, Western Minnesota filed a request to begin site preparation. Western Minnesota stated that if site preparation did not begin on or about July 1, 2003, the project could be delayed one year. Western Minnesota committed to restoring the site in accordance with any Board order in the event the facility is not ultimately built. Consumer Advocate filed a response on June 18, 2003, supporting the request to begin site preparation. From correspondence filed with the Board, it appears the Schroeters and Nelsons object to the request.

Iowa Code § 476A.15 grants the Board the authority, if it determines the public interest would not be adversely affected, to waive any of the requirements of the subchapter. The Board notes that pursuant to Iowa Code § 476A.9, allowing advance site preparation has no probative value in the Board's ultimate decision to grant a certificate or grant a waiver from the certificate requirements. The Board is concerned that if advance site preparation is not allowed, the project may be delayed, to the detriment of the over 40,000 customers who will receive power from

the new facility. Because Western Minnesota has committed to restoration of the site pursuant to Board order if the facility is not constructed, the Board finds the public interest is not adversely affected and will allow advance site preparation. The Board will waive the requirements of Iowa Code § 476A.9 to the extent the statute provides that site preparation shall not proceed until after a siting hearing.

With respect to the main waiver request, the Board has reviewed the objections filed by the adjoining landowners. Some portions of the objections appear to be based on misunderstandings. For example, Western Minnesota is not asking for the right of eminent domain and no adjoining land will be condemned for the project. Other issues raised in the objections, such as hunting rights and issues that could be characterized as zoning concerns, do not appear to be within the purview of the siting criteria established in chapter 476A. Finally, on environmental matters such as air quality, the Board notes that these issues are within the purview of the Iowa Department of Natural Resources (IDNR) and the Board has traditionally deferred to IDNR's expertise in these areas. If appropriate permits are issued, the Board has found any environmental criterion satisfied.

The Board notes that it has previously waived the siting statute for similar generation projects. See, Corn Belt Power Cooperative and Basin Electric Power Cooperative, "Order Granting Waiver," Docket No. WRU-01-30-917 (7/13/01). However, in order to allow the objectors a full opportunity to present their objections, a hearing will be scheduled on the waiver request. The matter will be assigned to an

administrative law judge, who will, among other things, set a hearing date by subsequent order.

IT IS THEREFORE ORDERED:

1. The request to begin site preparation filed by the Western Minnesota Municipal Power Agency on June 9, 2003, is granted.

2. Pursuant to Iowa Code § 17A.11(1)"b" (2002) and 199 IAC 7.1(4), Docket No. WRU-03-19 is assigned to the Board's administrative law judge, Amy Christensen, to, among other things, conduct a hearing and issue a proposed decision. The administrative law judge shall have the authority provided under 199 IAC 7.1(4)"a" through "j."

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 30th day of June, 2003.